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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTINE WHALEN, *et al.*,

Plaintiffs,

v.

THE KROGER CO., ALBERTSONS
COMPANIES, INC., and CERBERUS
CAPITAL MANAGEMENT, L.P.,

Defendants.

Case No.: 3:23-cv-00459-VC

**STIPULATED REQUEST FOR AN
ORDER MODIFYING BRIEFING
SCHEDULE AND HEARING DATE FOR
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION;
[~~PROPOSED~~ ORDER]**

STIPULATION

Pursuant to Local Rule 6-2, IT IS HEREBY STIPULATED by and between Plaintiffs and Defendants The Kroger Co. (“Kroger”) and Albertsons Companies, Inc. (“Albertsons”) (collectively, the “Parties”), by and through their respective attorneys of record that, if the Court approves, the briefing schedule and hearing date for Plaintiffs’ Motion for a Preliminary Injunction (ECF No. 28), filed March 23, 2023 (“PI Motion”) shall be modified as follows: (1) Defendants’ Opposition to Plaintiffs’ PI Motion shall be due April 20, 2023; (2) Plaintiffs’ Reply in Support of the PI Motion shall be due May 4, 2023; and (3) the PI Motion shall be heard on May 18, 2023, or as soon thereafter as the Court may deem appropriate.

In support of the stipulation, the Parties state as follows:

1. On February 2, 2023, Plaintiffs Christine Whalen, Gabriel Garavanian, Sondra K. Russell, Pamela Faust, Lisa McCarthy, Katherine R. Arcell, June Stansbury, Timothy Niebor, Clyde D. Stensrud, Len Marazzo, Yvonne Jocelyn Gardner, Pamela S. Ward, Brenda K. Davis, Jose M. Brito, Don Freeland, Harry Garavanian, Bill Rubensohn, Valarie Ann Jolly, Michael C. Malaney, Carolyn Fjord, Jan-Marie Brown, Gary Talewsky, Deborah M. Pulfer, Donna Fry, and Rosemary D’Augusta (together “Plaintiffs”) filed a complaint (the “Complaint”) against Kroger, Albertsons, and Cerberus Capital Management, L.P. (“Cerberus”) in Case No. 3:23-cv-459.

2. On February 23, 2023, the Parties entered into a stipulation extending the time for Kroger and Albertsons to answer or otherwise respond to the Complaint by 45 days, from March 1, 2023, to April 17, 2023. The Parties have neither requested nor received any other extensions in this case, and this Court has not prohibited further extensions.

3. The third defendant in this case, Cerberus, was served on March 27, 2023. Under Federal Rule of Civil Procedure 12(a)(1), Cerberus’s response to the Complaint is due April 17, 2023. As of this filing, no attorney for Cerberus has made an appearance in this case.

4. On March 23, 2023, Plaintiffs filed the PI Motion, which seeks an injunction prohibiting a proposed merger between Albertsons and Kroger and prohibiting and/or disgorging the payment of a dividend that Albertsons paid on January 20, 2023 to its shareholders, including Cerberus. *See* PI Motion at 1.

1 5. Without the Court's approval of this stipulation, Defendants' oppositions to the PI
2 Motion would be due April 6, 2023; Plaintiffs' Reply in Support of the PI Motion would be due
3 April 13, 2023; and Plaintiffs' requested hearing date would be April 27, 2023.

4 6. Kroger and Albertsons stated in an October 14, 2022, press release announcing that
5 they had entered into an Agreement and Plan of Merger that the transaction is not expected to close
6 until 2024. Kroger reiterated this representation on its fourth quarter and full year 2022 earnings
7 call on March 2, 2023. Plaintiffs have requested that Kroger and Albertsons stipulate that the
8 transaction will not close prior to July 1, 2023, to allow time for the Court to rule on Plaintiffs'
9 Motion for Preliminary Injunction. Consistent with the parties' previous statements that the
10 transaction is not anticipated to close until 2024, Kroger and Albertsons hereby stipulate that the
11 transaction will not close prior to July 1, 2023.

12 7. The Parties stipulate to this modified briefing schedule and hearing date to allow
13 adequate time to brief and prepare for the PI Motion. In addition, because this case is still in its
14 early stages, the transaction will not close prior to July 1, 2023, one defendant was only recently
15 served, and the PI Motion is the only substantive filing in this court, granting this stipulation will
16 not prejudice any party.

17 Accordingly, IT IS HEREBY STIPULATED AND AGREED, by and between undersigned
18 counsel and subject to Court approval, as follows:

19 1. The proposed merger between Albertsons and Kroger will close no earlier than July
20 1, 2023;

21 2. Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction shall be due
22 no later than April 20, 2023;

23 3. Plaintiffs' Reply in Support of the Motion for Preliminary Injunction shall be due no
24 later than May 4, 2023; and

25 4. The Motion for Preliminary Injunction shall be heard on May 18, 2023, or as soon
26 thereafter as the Court may deem appropriate.

1 Dated: March 29, 2023

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SIGNATURE ATTESTATION

I, Daniel B. Asimow, am the ECF user whose ID and password are being utilized to electronically file this **STIPULATED REQUEST FOR AN ORDER MODIFYING BRIEFING SCHEDULE AND HEARING DATE FOR PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION; [PROPOSED ORDER]**. Pursuant to Local Rule 5-1(i)(3), I hereby attest that the other signatories have concurred in this filing.

DATED: March 29, 2023.

/s/ Daniel B. Asimow
DANIEL B. ASIMOW

~~PROPOSED~~ ORDER

Having considered the parties' stipulation, the court hereby ORDERS that the proposed merger between Kroger and Albertsons will not close prior to July 1, 2023; Kroger and Albertsons' responses to the Complaint shall be due April 17, 2023; Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction shall be due April 20, 2023; Plaintiffs' Reply in Support of the Motion for Preliminary Injunction shall be due May 4, 2023; and the Motion for Preliminary Injunction shall be heard on May 18, 2023.

IT IS SO ORDERED.

DATED: April 3, 2023



HONORABLE VINCE CHHABRIA
United States District Judge